

hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the employer, and the employee.

(2) If the analysis of the split specimen is reconfirmed by the second laboratory for the presence of the drug(s) or drug metabolites(s), the MRO shall notify the employer and employee of the results of the test.

(g) If an employee has not contacted the MRO within 72 hours, as provided in paragraphs (e) and (f) of this section, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

(h) When the employer uses the split sample method of collection, the employee is not authorized to request a reanalysis of the primary specimen as provided in paragraph (e) of this section.

(i) *Disclosure of information.* Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.

(1) The MRO may disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if—

(i) An applicable DOT regulation permits or requires such disclosure;

(ii) In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

(iii) In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her safety-sensitive function could pose a significant safety risk.

(2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

[54 FR 49866, Dec. 1, 1989, as amended at 59 FR 7356, Feb. 15, 1994; 61 FR 37699, July 19, 1996]

§ 40.35 Protection of employee records.

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

§ 40.37 Individual access to test and laboratory certification results.

Any employee who is the subject of a drug test conducted under this part shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

§ 40.39 Use of certified laboratories.

(a) Except as provided in paragraph (b) of this section, employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug